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Volume 2

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Table of Contents

Chapter 4: The Homicide Offences	209
4(a) Overview of the Homicide Offences	209
4(b) Causation in the Law of Homicide	211
* Smithers v. The Queen.....	211
Note: Harbottle and Nette	213
R. v. Maybin	216
Problems on Causation	226
4(c) The Fault Element for Unlawful Act Manslaughter	227
4(d) The Fault Elements for Murder.....	229
4(d)(i) Section 229	229
Note: R. v. Walle	229
4(d)(ii) Constitutional Considerations.....	231
Vaillancourt v. The Queen.....	231
* R. v. Martineau	242
Notes and Questions on Vaillancourt and Martineau	251
4(e) The Defence of Provocation	258
* R. v. Cairney	258
Note: Amendments to s. 232.....	274
4(f) First Degree Murder.....	274
Chapter 5: Assault.....	275
R. v. Jobidon	275
* Jobidon: Notes and Problems.....	296
Chapter 6: Sexual Assault	299
6(a) Introduction.....	299
Sexual assault: Chronology of changes to the law.....	299
* R. v. Ewanchuk (S.C.C.).....	301
6(b) Consent: <i>Actus Reus</i>	318
6(c) Consent: <i>Mens Rea</i>	321
6(c)(i) Background: Consent and Mistake in the Law of Rape.....	321
6(c)(ii) Consent and Mistake in the Law of Sexual Assault	330
* R. v. Cornejo	330

6(d) Distinguishing Sexual Assault from Common Assault	336
R. v. Chase (N.B.C.A.)	336
R. v. Chase (S.C.C.).....	339
R. v. V.(K.B.).....	343
Problems	344

CHAPTER 6: SEXUAL ASSAULT

6(a) Introduction

Sexual assault: Chronology of changes to the law

Date	Substantive offences	Rules of Evidence
Before 26 April 1976	<ul style="list-style-type: none"> • Rape • Indecent assault on a female person • Indecent assault on a male person • Gross indecency • etc ... 	<ul style="list-style-type: none"> • Mandatory corroboration warning • Doctrine of recent complaint • Complainant could be questioned about sexual conduct with men other than the accused to support inferences that (i) she consented and (ii) she was less credible; but contradicting evidence was not admissible (because subject to the collateral facts bar) • Evidence of complainant's bad character for chastity admissible on issue of credibility
26 April 1976 to 4 Jan. 1983		<p>s. 142 of <i>Cr. Code</i>, R.S.C. 1970, c. C-34, enacted</p> <p>Leading case interpreting s. 142 was <i>R. v. Forsythe</i>, [1980] 2 S.C.R. 268: Judge could limit questioning of complainant on sexual history, but when questioning permitted, contradicting evidence was admissible (no longer subject to the collateral facts bar)</p>
4 Jan. 1983	<ul style="list-style-type: none"> • Offences of rape and indecent assault repealed • offence of sexual assault enacted (see now <i>Cr. Code</i>, s. 265 and s. 271) • "marital exemption" removed 	<ul style="list-style-type: none"> • Corroboration warning and recent complaint abrogated (see now <i>Cr. Code</i>, ss. 274, 275) • First version of s. 276 enacted, limiting admissibility of evidence concerning complainant's sexual history with persons other than the accused • s. 277 enacted, making evidence of sexual reputation inadmissible
1 Jan. 1988	<ul style="list-style-type: none"> • Gross indecency and several other sexual offences repealed 	

	<ul style="list-style-type: none"> ss. 150.1, 151, 152, 153 (sexual offences against children) enacted 	
22 Aug. 1991		<i>R. v. Seaboyer</i> , [1991] 2 S.C.R. 577: <ul style="list-style-type: none"> s. 276 invalidated and replaced by new common law rule s. 277 upheld
15 Aug. 1992	Sections 273.1 and 273.2, modifying the offence of sexual assault, enacted; new sections define “consent” and make defence of mistake subject to “reasonable steps”	Revised version of s. 276 enacted, limiting admissibility of evidence concerning complainant’s sexual history (including with the accused)
1998	<i>R. v. Cuerrier</i> , [1998] 2 S.C.R. 371, interpreting “fraud” in s. 265(3)(c)	
1999	<i>R. v. Ewanchuk</i> , [1999] 1 S.C.R. 330, interpreting ss. 273.1 and 273.2	
2000		<i>R. v. Darrach</i> , 2000 SCC 46: revised version of s. 276 upheld
2011	<i>R. v. J.A.</i> , 2011 SCC 28: no “advance consent” to sexual activity	
2014	<i>R. v. Hutchinson</i> , 2014 SCC 19, interpreting “fraud” in s. 265(3)(c) and “the sexual activity in question” in s. 273.1(1)	
13 Dec. 2018	Further amendments to ss. 273.1 and 273.2	Section 276 amended, including addition of s. 276(4)
2019	<i>R. v. MacIntyre</i> , 2019 CMAC 3: <i>semble</i> , <i>Morrison</i> approach applies to s. 273.2(b)	Trilogy of cases interpreting s. 276: <ul style="list-style-type: none"> <i>R. v. Barton</i>, 2019 SCC 33 <i>R. v. Goldfinch</i>, 2019 SCC 38 <i>R. v. R.V.</i>, 2019 SCC 41
2021	<i>R. v. G.F.</i> , 2021 SCC 20, interpreting “incapable of consenting” in s. 273.1(2)(b)	

